AOTOP, LLC d/b/a Excel Rehabilitation and Health Center *and* 1115 Florida Division of 1199, Service Employees International Union, AFL–CIO–CLC. Case 12–CA–21576

September 28, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

Pursuant to a charge filed on June 11, 2001, the General Counsel of the National Labor Relations Board issued a complaint on July 17, 2001, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 12–RC–8576. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On August 6, 2001, the General Counsel filed a Motion for Summary Judgment. On August 9, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing regarding the Union's request for information. The Union requested the following information from the Respondent by letter of April 25, 2001:

> 1. A list of current employees, including their names, dates of hire, rates of pay, job classification, department, last known address, and phone number.
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> 2. A copy of all current company personnel policies and procedures which relate to or have an effect on bargaining unit employees, including but not limited to, leaves of absence, shifts, starting times, hiring rules, safety rules, vacation, holidays and overtime.
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> 3. A copy of all company fringe benefits plans, including pension, profit sharing, severance, stock initiative, health insurance, apprenticeship, training, legal services, child care, or any other plans which relate to the employees, and where applicable, copies of summary plan descriptions for such plans.
>
> 4. Copies of all current job descriptions for bargaining unit employees.
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> 5. Copies of any company wage and salary plans, including schedules for employees on incentive jobs.
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> 6. Any and all agreements signed with all subcontractors that relate to the bargaining unit employees' jobs, wages, benefits, and working conditions.

The Respondent denies that the requested information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees. It is well established that, except for the subcontracting information requested in item number 6, the foregoing type of compensation and employment information sought by the Union is presumptively relevant for purposes of collective bargaining and must be furnished on request unless its relevance is rebutted.[1] The Respondent has not attempted to rebut the relevance of the information requested by the Union.

[1] See, e.g., *U.S. Family Care San Bernardino*, 315 NLRB 108 (1994); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

The Board has held that subcontracting information like that requested by the Union in item 6 is not presumptively relevant and therefore a union seeking such information must demonstrate its relevance. *Sunrise Health & Rehabilitation Center*, 332 NLRB No. 133 (2000); *Associated Ready Mixed Concrete*, 318 NLRB 318 (1995), enfd. 108 F.3d 1182 (9th Cir. 1997). Here, the Union did not specify in its request why it wanted the subcontracting information, or otherwise demonstrate its relevance. This, however, does not excuse the Respondent's failure to provide all of the other information requested by the Union, which we have found is presumptively relevant.

Accordingly, we grant the Motion for Summary Judgment[2] and will order the Respondent to bargain with the Union and furnish the Union with the information it requested, with the exception of the subcontracting information in item 6.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Florida corporation with an office and place of business in Tampa, Florida (the Respondent's Tampa facility), has been engaged in the business of operating a nursing home.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues valued in excess of $100,000, and purchased and received at its Tampa, Florida facility goods valued in excess of $50,000 directly from points outside the State of Florida.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that 1115 Florida Division of 1199, Service Employees International Union, AFL–CIO–CLC is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held January 31, 2001, the Union was certified on April 18, 2001, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time service and maintenance employees, including certified nursing assistants, dietary aides, cooks, dietary production supervisor, housekeeping aides, laundry aides, maintenance aides, floor technicians, medical records employees, central supply clerks, rehabilitation tech/aides, restorative aides, physical therapy assistants, activities aides, receptionists and staffing coordinators employed by Respondent at its Tampa, Florida facility, excluding all other employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

[2] The Respondent's requests that the complaint be dismissed and that it recover costs and attorneys' fees are denied.

B. Refusal to Bargain

Since about April 25, 2001, the Union has requested the Respondent to bargain and to furnish information, and, since on about that same date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after April 25, 2001, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, AOTOP, LLC d/b/a Excel Rehabilitation and Health Center, Tampa, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with 1115 Florida Division of 1199, Service Employees International Union, AFL–CIO–CLC, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time service and maintenance employees, including certified nursing assistants, dietary aides, cooks, dietary production supervisor, housekeeping aides, laundry aides, maintenance aides, floor technicians, medical records employees, central supply clerks, rehabilitation tech/aides, restorative aides, physical therapy assistants, activities aides, receptionists and staffing coordinators employed by Respondent at its Tampa, Florida facility, excluding all other employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on April 25, 2001, with the exception of the subcontracting information.

(c) Within 14 days after service by the Region, post at its facility in Tampa, Florida, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 12 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 25, 2001.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 28, 2001

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with 1115 Florida Division of 1199, Service Employees International Union, AFL–CIO–CLC, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time service and maintenance employees, including certified nursing assistants, dietary aides, cooks, dietary production supervisor, housekeeping aides, laundry aides, maintenance aides, floor technicians, medical records employees, central supply clerks, rehabilitation tech/aides, restorative aides, physical therapy assistants, activities aides, receptionists and staffing coordinators employed by us at our Tampa, Florida facility, excluding all other employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on April 25, 2001, with the exception of the subcontracting information.

AOTOP, LLC D/B/A EXCEL REHABILITATION AND HEALTH CENTER